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4 **UNITED STATES DISTRICT COURT**
5 **NORTHERN DISTRICT OF CALIFORNIA**
6 **SAN JOSE DIVISION**
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8 STEVEN GOMO, et al.,
9 Plaintiffs,

10 v.

11 NETAPP, INC., et al.,
12 Defendants.

Case No. 17-cv-02990-BLF

**ORDER RE PLAINTIFFS' MOTION TO
ENLARGE TIME FOR OPPOSITION
TO DEFENDANTS' MOTION TO
DISMISS**

[Re: ECF 15]

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14 Plaintiffs filed this action on May 24, 2017, asserting ERISA¹ claims against their former
15 employer, NetApp, Inc., and the NetApp Executive Medical Retirement Plan. *See* Compl., ECF 1.
16 On June 15, 2017, Defendants filed a motion to dismiss the complaint under Federal Rule of Civil
17 Procedure 12(b)(6) and noticed their motion for hearing on November 16, 2017. Plaintiffs'
18 response to the motion is due on June 29, 2017. *See* Civ. L.R. 7-3(a) (opposition due not more
19 than fourteen days after motion is filed).

20 On June 21, 2017, Plaintiffs filed a motion to enlarge time for opposition pursuant to Civil
21 Local Rule 6-3. Pls.' Motion, ECF 15. In that motion, Plaintiffs seek not only an enlargement of
22 time to respond to Defendants' Rule 12(b)(6) motion, but they also seek to convert Defendants'
23 motion to a summary judgment motion under Federal Rule of Civil Procedure 56. *Id.* Plaintiffs
24 also request leave to conduct discovery before responding to the converted Rule 56 motion. *Id.*
25 Finally, Plaintiffs assert that in order to complete discovery prior to responding to Defendants'
26 motion, they need an enlargement of time until October 2, 2017 to respond to Defendants' motion.
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¹ Employee Retirement Income Security Act of 1974.

1 Defendants have filed a timely opposition to the motion to enlarge time. Defs.' Opp., ECF
2 16; *see also* Civ. L.R. 6-3(b) (opposition to motion to enlarge time due within four days after
3 receipt of motion). Defendants argue that their Rule 12(b)(6) motion should not be converted to a
4 Rule 56 motion and that the discovery requested by Plaintiffs therefore is unwarranted. Defs.'
5 Opp., ECF 16.

6 The Court declines to convert Defendants' 12(b)(6) motion to a Rule 56 motion.
7 Accordingly, the lengthy enlargement of time requested by Plaintiffs is unnecessary. However,
8 the Court will grant Plaintiff fourteen days from the date of this order, until July 10, 2017, to file
9 an opposition to Defendants' Rule 12(b)(6) motion.

10 **IT IS SO ORDERED.**

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12 Dated: June 26, 2017

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14 BETH LABSON FREEMAN
15 United States District Judge
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